

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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5 In the Matter of ) Docket No. HWCA 99/00-3009  
6 Clearwater Environmental )  
7 Management, Inc. )  
8 dba Alviso Independent Oil )  
9 5002 Archer Street ) CONSENT ORDER  
10 Alviso, CA 95002 )  
11 EPA ID No.: CAL 000 161 743 ) Health and Safety Code  
Respondent ) Section 25 187  
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14 The State Department of Toxic Substances Control (Department) and  
15 Clearwater Environmental Management, Inc. (Respondent) enter into this Consent Order  
16 and agree as follows:

17 1. Respondent generates, transfer, and/or stores hazardous waste at 5002  
18 Archer Street, Alviso, California 95002 (Site).

20 2. The Department inspected the Site on September 14, 20 and 22, 1999.

21 3. The Department alleges the following violations:

22 3.1 The Respondent violated Title 22, California Code of Regulations (CCR),  
23 Section 66264.196 and Hazardous Waste Facility Permit dated December 24, 1997  
24 (Permit), Part II, Special Condition number 18, in that, on or about September 14, 1999,  
25 Respondent failed to empty storage tank # 2 that was leaking and immediately removing it  
26 from service.  
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3.2. The Respondent violated Title 22, CCR, Section 66264.73, in that, on or about September 14, 1999, Respondent failed to keep a written operating log at the facility for hazardous waste received in drums.

3.3. The Respondent violated Health and Safety Code (H&SC), Section 25201.1(a), in that, on or about September 14, 1999, Respondent conducted truck-to-truck transfer activity without authorization from the Department.

3.4. The Respondent violated Title 22, CCR, Section 66270.30(a) and Permit, Part II, Special Conditions 20(a), 20(b), 20(c), 20(d), 20(h), 20(j), and 20(m), in that, Respondent failed to comply with these conditions within six months from the effective date of the Permit.

3.5. The Respondent violated Title 22, CCR, Section 66270.30(a) and Permit, Part II, Special Condition #7, in that, on or about September 14, 1999, Respondent exceeded its authorized storage capacity of 88 55-gallons drums of hazardous waste in container storage area # 2.

4. No dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to H&SC, Section 25137.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent admits to the violations alleged above.



SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1. 1. Within 30 days of the effective date of this Order, Respondent shall demonstrate or submit a plan to demonstrate compliance with Permit, Special Conditions 20(a), 20(b), 20(c), 20(d), 20(h), 20(j), and 20(m).

10.1.2. Effective immediately, Respondent shall cease conducting any truck-to-truck transfer activity until it has obtained authorization from the Department to conduct such activity.

10.1.3. Effective immediately, Respondent shall cease storing hazardous waste in container storage area #2 in excess of its authorized storage capacity of 88 55-gallon drums.

10.1.4. Effective immediately, Respondent shall cease storing hazardous waste in tank #2 until the tank has been repaired and it has been assessed by an independent, qualified, professional engineer, registered in California. All documents pertaining to the tank repair, including the certification by an independent, qualified, professional engineer for the tank assessment, shall be submitted to the Department for review. Respondent shall obtain prior approval from the Department before using tank #2 for storing hazardous waste

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Robert Kou  
Supervising Hazardous Substances Scientist  
Department Of Toxic Substances Control  
1011 N. Grandview Avenue  
Glendale, California 91201



1                   10.3. Communications: All approvals and decisions of the Department  
2     made regarding such submittals and notifications shall be communicated to Respondent in  
3     writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee.  
4     No informal advice, guidance, suggestions, or comments by the Department regarding  
5     reports, plans, specifications, schedules, or any other writings by Respondent shall be  
6     construed to relieve Respondent of its obligation to obtain such formal approvals as may  
7     be required.

9                   10.4. Department Review and Approval: If the Department determines  
10    that any report, plan, schedule, or other document submitted for approval pursuant to this  
11    Consent Order fails to comply with the Order or fails to protect public health or safety or  
12    the environment, the Department may return the document to Respondent with  
13    recommended changes and a date by which Respondent must submit to the Department a  
14    revised document incorporating the recommended changes.

16                  10.5. Compliance with Applicable Laws: Respondent shall carry out this  
17    Order in compliance with all local, State, and federal requirements, including but not  
18    limited to requirements to obtain permits and to assure worker safety.

20                  10.6. Endangerment during Implementation: In the event that the  
21    Department determines that any circumstances or activity (whether or not pursued in  
22    compliance with this Consent Order) are creating an imminent or substantial  
23    endangerment to the health or welfare of people on the site or in the surrounding area or  
24    to the environment, the Department may order Respondent to stop further implementation  
25    for such period of time as needed to abate the endangerment. Any deadline in this  
26    Consent Order directly affected by a Stop Work Order under this section shall be extended  
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1 for the term of such Stop Work Order

2 10.7. Liability: Nothing in this Consent Order shall constitute or be  
3 construed as a satisfaction or release from liability for any conditions or claims arising as a  
4 result of past, current, or future operations of Respondent, except as provided in this  
5 Consent Order. Notwithstanding compliance with the terms of this Consent Order,  
6 Respondent may be required to take further actions as are necessary to protect public  
7 health or welfare or the environment.  
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9 10.8. Site Access: Access to the Site shall be provided at all reasonable  
10 times to employees, contractors, and consultants of the Department, and any agency  
11 having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right  
12 of entry or inspection that any agency may otherwise have by operation of any law. The  
13 Department and its authorized representatives may enter and move freely about all  
14 property at the Site at all reasonable times for purposes including but not limited to:  
15 inspecting records, operating logs, and contracts relating to the Site; reviewing the  
16 progress of Respondent in carrying out the terms of this Consent Order; and conducting  
17 such tests as the Department may deem necessary. Respondent shall permit such persons  
18 to inspect and copy all records, documents, and other writings, including all sampling and  
19 monitoring data, in any way pertaining to work undertaken pursuant to this Consent  
20 Order.  
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22 10.9. Sampling, Data, and Document Availability: Respondent shall  
23 permit the Department and its authorized representatives to inspect and copy all sampling,  
24 testing, monitoring, and other data generated by Respondent or on Respondent's behalf in  
25 any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall  
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1 allow the Department and its authorized representatives to take duplicates of any samples  
2 collected by Respondent pursuant to this Consent Order. Respondent shall maintain a  
3 central depository of the data, reports, and other documents prepared pursuant to this  
4 Consent Order. All such data, reports, and other documents shall be preserved by  
5 Respondent for a minimum of six years after the conclusion of all activities under this  
6 Consent Order. If the Department requests that some or all of these documents be  
7 preserved for a longer period of time, Respondent shall either comply with that request,  
8 deliver the documents to the Department, or permit the Department to copy the  
9 documents prior to destruction. Respondent shall notify the Department in writing at least  
10 six months prior to destroying any documents prepared pursuant to this Consent Order.  
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13 10.10. Government Liabilities: The State of California shall not be liable  
14 for injuries or damages to persons or property resulting from acts or omissions by  
15 Respondent or related parties specified in paragraph 10.16 in carrying out activities  
16 pursuant to this Consent Order, nor shall the State of California be held as a party to any  
17 contract entered into by Respondent or its agents in carrying out activities pursuant to this  
18 Consent Order.  
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20 10.11. Additional Enforcement Actions. By agreeing to this Consent  
21 Order, the Department does not waive the right to take further enforcement actions,  
22 except to the extent provided in this Consent Order.  
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24 10.12. Incorooration of Plans and Reports: All plans, schedules, and  
25 reports that require Department approval and are submitted by Respondent pursuant to  
26 this Consent Order are incorporated in this Consent Order upon approval by the  
27 Department.



10.13. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.14. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

10.15. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by H&SC section 25 188 and other applicable provisions of law.

10.16. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

## PAYMENTS

11. Respondent shall pay the Department a total sum of \$55,000.00 in penalties. The penalties shall be paid in five (5) initial, equal installments of \$10,000.00 each and one (1) payment of \$5,000.00. Payments are due and payable on: October 1, 2000; January 1, 2001; April 1, 2001; July 1, 2001; October 1, 2001; and January 1, 2002. Any installment payment which is received by the Department after the 15th day of the

1 payment month in which it is due is subject to a penalty in the amount of \$750.00, which  
2 penalty shall be paid by Respondent no later than the due date of the next installment  
3 payment. If Respondent is late in making two or more payments, or fails to make a full  
4 installment payment within thirty (30) days of its due date, then the Department, at its  
5 option, may declare the entire balance of the outstanding penalties immediately due and  
6 owing. If Respondent fails to make any payment timely as provided above, Respondent  
7 agrees to pay interest thereon at the rate established pursuant to H&SC, Section 25360.1,  
8 Respondent further agrees to pay all costs and attorney's fees incurred by the Department  
9 in pursuing the collection of any sums the payment of which becomes delinquent  
10 hereunder. Respondent's checks shall be made payable to Department of Toxic  
11 Substances Control and shall be delivered, together with a payment Voucher in the form  
12 set forth in Exhibit 1 attached hereto and incorporated herein by reference, to the  
13 Department at the following address:

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15  
16 Department of Toxic Substances Control  
17 Accounting Office  
18 400 P Street, 4th Floor  
19 P. O. Box 806  
Sacramento, California 95812-0806

20 A photocopy of the check shall be sent to:

21 Robert Kou  
22 Supervising Hazardous Substances Scientist  
23 Department of Toxic Substances Control  
24 1011 N. Grandview Avenue  
Glendale, California 91201

25 12. Effective Date: The effective date of this Consent Order is the date it  
26 is signed by the Department.

27 13. Integration: This agreement constitutes the entire agreement between





1 the parties and may not be amended, supplemented, or modified, except as provided in this  
2 agreement.

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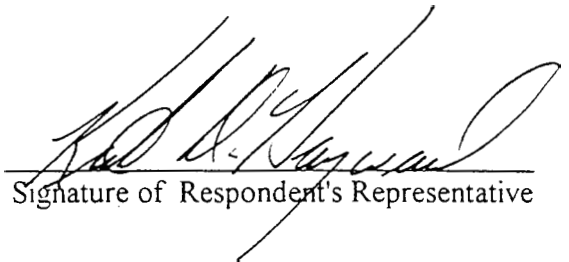
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Dated: 9-13-00

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Signature of Respondent's Representative

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Dated: 9/20/00

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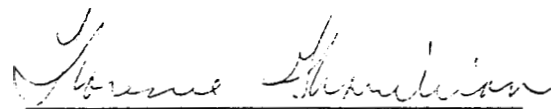
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Florence Gharibian, Branch Chief  
Statewide Compliance Division  
Department of Toxic Substances Control

